

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

### IN THE MATTER OF:

#### WEST CENTRAL COOPERATIVE

200 East 1st Street  
Halbur, IA 51444

HSI No. 052514-RPY-0859

### ADMINISTRATIVE CONSENT ORDER

2014-WW- 16

**TO:** West Central Cooperative  
Attn: Mike Blum  
200 East 1st Street  
Halbur, IA 51444

West Central Cooperative  
Attn: Jeff Stroborg  
406 1st Street  
Ralston, IA 51459

### I. SUMMARY

The Iowa Department of Natural Resources (Department) and West Central Cooperative (West Central) hereby agree to the following Administrative Consent Order (Order). West Central agrees to pay fish restitution and Fisheries investigation costs of \$5,270.66, Field Services investigation costs of \$1,793.60, and an administrative penalty of \$4,000.00 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

#### Relating to technical requirements:

Ryan Young  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Ph: 712/243-1934  
ryan.young@dnr.iowa.gov

#### Relating to legal requirements:

Aaron Brees, Attorney  
Iowa Department of Natural Resources  
502 East 9th Street  
Des Moines, Iowa 50319-0034  
Ph: 515/281-5965  
aaron.brees@dnr.iowa.gov

#### Payment of penalty to:

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 503219-0034

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## II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 481A.151, which authorizes the collection of restitution costs for harm to wildlife; and Iowa Code section 455B.109 and administrative rules in 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.

## III. STATEMENT OF FACTS

The Department and West Central hereby agree to the following statement of facts:

1. West Central is the owner of a facility located in Halbur, Iowa (the facility) which provides various agricultural services and products, including anhydrous ammonia.
2. At approximately 8:59 a.m. on May 25, 2014, Department staff received a page from the Environmental Services answering center. They immediately contacted Mike Blum of West Central, who reported that a release had occurred from the facility's bulk anhydrous ammonia tank. Mr. Blum stated that the release had occurred the previous day, May 24, 2014, at approximately 12:45 p.m. and was stopped at approximately 1:00 p.m. He stated that the Halbur fire department had responded with water in an attempt to stop the leak and that he was unsure of the quantity of anhydrous that had been released. Mr. Blum stated that he personally visited the site the morning of May 25, 2014. He observed burnt vegetation around the tank and dead fish in the creek, at which time he reported the release to the Department.
3. Department staff inquired as to why the spill notification had not been made in a timely manner. Mr. Blum stated that he was not aware that the release had been of a reportable quantity.
4. At approximately 11:00 a.m. on May 25, 2014, Department staff arrived at the facility in Halbur. Upon arrival, staff observed an area around the bulk ammonia tank where the vegetation was dead and/or dying and noted the odor of ammonia in the area around the tank. The dead/dying vegetation was present throughout the flow path from the bulk ammonia tank to Halburn Creek. Staff also observed the presence of a tile intake between the ammonia tank and Halburn Creek.
5. Beginning at approximately 12:15 p.m. on May 25, 2014, Department staff began visiting various access points along Halburn Creek and Brushy Creek into which it flows. They conducted field tests of the water at each location. The field tests produced the following results:

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Sampling Location/Time	Date/Time	Ammonia	pH
Site #1 Halburn Creek and County Road N14	May 25, 2014 12:15 p.m.	2-3 ppm	
Site #2 Halburn Creek and Hawthorne Avenue	May 25, 2014 12:30 p.m.	2-3 ppm	
Site #3 Brushy Creek and 240th Street	May 25, 2014 12:45 p.m.	2-3 ppm	8.4
Site #4 Brushy Creek and County Road E46	May 25, 2014 1:00 p.m.	30-60 ppm	9.2
Site #5 Brushy Creek and Ivy Avenue	May 25, 2014 1:30 p.m.	25-30 ppm	9.0
Site #6 Brushy Creek and Jade Avenue/270th Street	May 25, 2014 1:50 p.m.	1-2 ppm	8.4
Site #6 Brushy Creek and Jade Avenue/270th Street	May 25, 2014 7:00 p.m.	<1 ppm	8.4
Site #5 Brushy Creek and Ivy Avenue	May 25, 2014 7:10 p.m.	20-25 ppm	
Site #4 Brushy Creek and County Road E46	May 25, 2014 7:20 p.m.	20-25 ppm	
Site #3 Brushy Creek and 240th Street	May 25, 2014 7:35 p.m.	1-2 ppm	
Site #6 Brushy Creek and Jade Avenue/270th Street	May 26, 2014 8:30 a.m.	7-10 ppm	
Site #7 Brushy Creek and Kittyhawk Avenue	May 26, 2014 8:50 a.m.	<1 ppm	
Site #5 Brushy Creek and Ivy Avenue	May 26, 2014 9:15 a.m.	2-3 ppm	
Site #4 Brushy Creek and County Road E46	May 26, 2014 9:45 a.m.	1-2 ppm	
Site #3 Brushy Creek and 240th Street	May 26, 2014 10:15 a.m.	2-3 ppm	
Site #7 Brushy Creek and Kittyhawk Avenue	May 26, 2014 10:50 a.m.	<1 ppm	

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6. While conducting the above listed field tests, Department staff collected water samples at sites 4 and 5 which were sent to the State Hygienic Laboratory for analysis. That analysis produced the following results:

Location	Date	Ammonia
Site #4 Brushy Creek and County Road E46	May 25, 2014	33.0 mg/L (ppm)
Site #5 Brushy Creek and Ivy Avenue	May 25, 2014	17.0 mg/L (ppm)

7. While conducting field tests on May 25, 2014, Department staff noted dead fish at sample sites 1, 2, 3, 4, and 5. Staff with the Department's Fisheries Bureau were contacted, and they arrived the morning of May 26, 2014 to conduct a fish kill investigation. The fish kill investigation found 50,128 dead fish beginning at the West Central facility on Halburn Creek and extending approximately five miles downstream to sample site #6 on Brushy Creek.

8. The field test results, laboratory analysis, and Fisheries investigation results are all consistent with a release of anhydrous ammonia from the Halbur facility entering Halburn Creek, directly resulting in the fish kill.

#### IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. 567 I.A.C. 131.1 states that a "hazardous condition" is "any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment." West Central's anhydrous ammonia release was a hazardous condition under this definition.

2. 567 I.A.C. 131.2 states that "[a]ny person...storing, handling, transporting, or disposing of a hazardous substance shall notify the department...of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition." West Central did not notify the Department of the hazardous condition within six hours, and therefore violated this provision.

3. Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) prohibit the discharge of "a pollutant" into "a water of the state" unless it is released pursuant to a valid permit issued

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by the director. National Pollution Discharge Elimination System (NPDES) permits are issued to point sources pursuant to Iowa Code section 455B.197 and 567 I.A.C. chapter 64. The Environmental Protection Commission (EPC) has adopted federal effluent limitation standards by reference, and imposed different standards when necessary to comply with applicable water quality standards. See 567 I.A.C. 62.8(2).

4. A "pollutant" is defined in Iowa Code section 455B.171(18) as "sewage, industrial waste, or other waste." Anhydrous ammonia, such as that released into the environment in the present case, is a pollutant under this definition.

5. Halburn Creek and Brushy Creek are "waters of the state" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream,...watercourse, waterway,...drainage system, and any other body or accumulation of water...natural or artificial, public or private, which are contained within...the state...."

6. As West Central did not have a NPDES permit authorizing the discharge of anhydrous ammonia to these waters, it has discharged a pollutant into waters of the state in violation of the above provisions.

7. Iowa Code section 455B.173 states that the EPC shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The EPC has done so in 567 I.A.C. chapter 61.

8. 567 I.A.C. 61.3(2) states that all surface waters of the State "shall be free from substances attributable to wastewater discharges or agricultural practices...which are acutely toxic to human, animal, or plant life." West Central's discharge, which caused the deaths of fish, is a violation of this provision.

9. Iowa Code section 481A.151 states that any person who is liable for polluting water of the state in violation of state law shall be required to pay restitution for any resulting injury to wild animals. This section authorizes the Natural Resource Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these assessments through Iowa Code chapter 17A contested case procedures. The NRC has adopted such rules in 571 I.A.C. 113.

10. Based on the authority provided by and methods specified in 571 I.A.C. 113, the Department is authorized to collect, and West Central is liable for the following:

Fish restitution	\$4,550.38
Fisheries investigation costs	\$720.28
Field Services investigation costs	<u>\$1,793.60</u>
Total	\$7,064.26

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**V. ORDER**

THEREFORE, the Department hereby orders and West Central agrees to the following:

1. West Central shall pay to the order of the Iowa Department of Natural Resources a total of \$7,064.26 for fish restitution and investigation costs within 30 days of receipt of this Order.
2. West Central shall pay an administrative penalty of \$4,000.00 to the order of the Iowa Department of Natural Resources within 30 days of receipt of this Order. In the alternative, West Central may make a payment of \$4,000.00 to the Carroll County Conservation Board, and provide documentation of this payment to the Department, within 30 days of receipt of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Additionally, Iowa Code section 455B.109 authorizes the EPC to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The EPC has adopted this schedule with procedures and criteria for assessment of penalties in 567 I.A.C. chapter 10.

**ECONOMIC BENEFIT:** West Central did not benefit economically from the incident. Therefore, no penalty is assessed for this factor.

**GRAVITY:** An illegal discharge resulting in a fish kill is a serious violation. In this case, over 50,000 fish were killed. In addition, West Central failed to report a hazardous condition to the Department in a timely manner. As a result, \$3,000 is assessed for this factor.

**CULPABILITY:** West Central has a duty to be aware of all requirements related to its handling of bulk anhydrous ammonia, and as such should have known to contact the Department to report the hazardous condition in an appropriate time period. A penalty of \$1,000 is assessed for this factor.

Based on the above factors, a total penalty amount of \$4,000 is assessed.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code sections 455B.175, 481A.151, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7 and 571 I.A.C. chapter 7, authorize a written notice of appeal to

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the EPC and NRC, respectively. This Order is entered into knowingly by and with the consent of West Central. By signing this Order all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties and fish restitution pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175.

David E. Coon

Dated this 22 day of November, 2014

Chuck Gipp

CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1<sup>st</sup> day of December, 2014

